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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules)
to Establish Rules and Policies)
Pertaining to a Non-Voice, Non-)
Geostationary Mobile-Satellite Service)

CC Docket 92-76

COMMENTS OF VOLUNTEERS IN TECHNICAL ASSISTANCE, INC.

Volunteers in Technical Assistance, Inc. ("VITA"), by its attorneys, hereby submits the following comments in response to the Commission's Notice of Proposed Rulemaking (the "Notice") in the above-referenced proceeding, regarding the promulgation of rules to govern the new, non-voice, non-geostationary orbit, mobile satellite service ("NVNG Service").

VITA fully supports the technical proposals set forth in the Notice, which reflect the recommendations of the below 1 GHz LEO Negotiated Rulemaking Committee in which VITA was privileged to participate. VITA also supports most of the non-technical proposals that are set forth in the Notice. There are, however, certain matters raised in the Notice, and discussed below, that are of concern to VITA. In particular, the rules should not burden the comparatively smaller, low cost NVNG services, such as VITA's services, which are designed to provide basic data communications services in developing countries. The rules should provide VITA the flexibility to expand its system in response to the needs of the developing world and allow VITA to make a financial showing commensurate with its ability to raise funds and with the financing of projects for developing countries.

A. While Licensees Should Not Be Required To Construct More Than A Two-Satellite System , They Should Be Able To Increase Their System Size As Demand Warrants.

Although the matter seems to be fairly well settled¹ , the Commission should not impose any standard that would require VITA, in the name of spectrum efficiency, to construct

¹ Compare Commission's decision not to impose specific spectrum efficiency standard, Notice at ¶¶ 8-10, with question regarding minimum number of satellites, Notice at ¶ 18.

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and launch more satellites at greater expense than necessary to fulfill its mission of making basic data communications service available in developing areas of the world. The kinds of telecommunications services so desperately needed in these areas do not necessarily demand instantaneous connectivity at all times, particularly when the current alternative may be a runner between villages.

Different types of services have different requirements that make instant access to an orbiting satellite important for some applications and a waste of resources for others. Accordingly, the public interest is best served by giving licensees flexibility in designing their systems and choosing the number of satellites that most effectively reaches their intended recipients in a cost-effective manner.

Subject to the level of use in developing countries, VITA hopes to be able to expand its services and increase the number of satellites in the VITASAT system beyond the initially-planned two satellites. In this regard, VITA suggests that, rather than specifying a precise number of satellites to be constructed and launched, each applicant be allowed to propose a range of satellites, with a minimum of two.

**B. More Flexible Financial Showing And Milestone Requirements
Should Apply For Smaller, Noncommercial Systems.**

VITA and the other pending applicants jointly proposed a two-stage financial showing requirement, as has been applied to separate satellite systems applicants.² The Notice expresses the Commission's reluctance to follow this approach, but, recognizing the difficulty of securing full system financing at the application stage, proposes that it be sufficient for an applicant to demonstrate the ability to finance the construction, launch, and operation of at least two satellites. See Notice, ¶ 18.

While the Commission's proposed standard may be reasonable for applicants proposing constellations of twenty or more satellites, it unduly burdens applicants, such as VITA, proposing smaller systems and having, therefore, much smaller financial requirements. Furthermore, VITA submits that it is unfair to require one applicant with far more modest financial requirements to show that it has financial commitments to construct, launch, and operate what could be its entire system, while requiring others, with far more grandiose plans,

² See Jointly Filed Comments of Orbcomm, Starsys and VITA, CC Docket No. 92-76 (May 18, 1992) ("Joint Comments").

to demonstrate financial commitments for one-tenth or less of their overall system requirement.

As a way of striking a more equitable balance in the financial showing requirement, is to require that applicants proposing to construct, launch, and operate no more than five satellites make a financial showing as to their ability to construct, launch, operate a single satellite and that systems that plan more than five satellites be required to make the showing proposed by the Commission as to two satellites. Thus, applicants would have to show financial substance sufficient to commence their contemplated service, without imposing an unrealistic and burdensome requirement that an applicant demonstrate committed funds for its entire satellite system at such an early stage.

In addition to modifying the level of financial showing required of smaller systems, VITA urges the Commission to include in its financial showing requirement the *caveat* suggested in the Joint Comments that would enable applicants for noncommercial systems to satisfy the financial showing requirement by submitting copies of grant commitment letters or other evidence of external funding commitments. In this regard, even though the Commission found it unnecessary to establish a separate noncommercial NVNG service,³ it should take into account, as it does in other services,⁴ that nonprofit entities such as VITA may rely, in part, upon commitments of grants and donations that, while often every bit as reliable as letters of commitments from financial institutions, may be in a different form than that expected of for-profit, commercial entities.⁵

³ At the same time, the Commission, in reaffirming its award of a pioneer's preference to VITA, confirmed its determination as to the public interest value of VITA's proposed low cost, noncommercial NVNG system and made clear that the licensing scheme proposed allows room for VITA's system to be licensed. See Report and Order, ET Docket No. 91-280, 71 R.R.2d 1239, 1244-45 (1993).

⁴ See, e.g., Alabama Citizens for Responsive Public TV, Inc., 69 F.C.C.2d 1062, 1072-74 (different financial qualification standard applied to noncommercial television applicant). There are also several rules applicable in the Private Land Mobile Radio Service that give noncommercial entities a longer period to construct their systems, in recognition of the different funding mechanisms and sources that may be available to such entities. See, e.g., 47 C.F.R. § 90.725 (construction requirements for commercial and non-commercial systems in the 220-222 MHz band); 47 C.F.R. § 90.629 (slow growth implementation schedules, although the Commission is considering extending the scope of this rule, to date, the slow growth option has been available to commercial systems only by waiver grant).

⁵ It should be noted that VITA's decade-long pioneering development and experimentation in the low-earth orbit satellites has been funded by a variety of grants and other donations.

In a matter related to the financial showing requirement, the Commission proposes that permittees commence construction of their first two satellites within one year of grant and begin construction of the remaining satellites within three years of grant. Notice at ¶ 13. This is similar to the proposal made in the Joint Comments, except that the proposed rule would have required commencement of construction of only a single satellite in the first year. Here, too, VITA urges the Commission to introduce a level of flexibility in its rules that reflects the various number of satellites that applicants may propose to construct. Accordingly, VITA urges that permittees of systems to consist of no more than five satellites be required to commence construction of a single satellite within the first year, instead of two satellites, which may be an appropriate standard for larger proposed systems.

Conclusion

One of the great achievements of the negotiated rules, which the Commission has fostered, is that they allow the development of several NVNG systems, each different in

